

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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M&S ADVISORY GROUP, INC., :  
Plaintiff, :  
vs. : Case No.C-1-02-522  
EYEMART EXPRESS, LTD., : (Judge Spiegel)  
Defendant. :  
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Telephone deposition of MONICA C. SMITH,  
deponent herein, called by the Plaintiff for direct  
examination, pursuant to the Federal Rules of Civil  
Procedure, taken before me, Lisa L. Weisenberger, a  
Registered Professional Reporter and Notary Public  
in and for the State of Ohio, at the offices of  
Dinsmore & Shohl, 1900 Chemed Center, 255 East Fifth  
Street, Cincinnati, Ohio, on Wednesday, February 18,  
2004, at 5:42 p.m.

ORIGINAL

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Wijdan Jreisat, Esq.  
4 Katz, Teller, Brant & Hild  
5 2400 Chemed Center  
6 255 East Fifth Street  
7 Cincinnati, Ohio 45202-4787  
8 Phone: (513) 721-4532

9 On behalf of the Defendant:

10 Jon B. Allison, Esq.  
11 Dinsmore & Shohl  
12 1900 Chemed Center  
13 255 East Fifth Street  
14 Cincinnati, Ohio 45202-3172  
15 Phone: (513) 977-8200

16 Also present: Jonathan Herskovitz, EyeMart

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S T I P U L A T I O N S

It is stipulated by and between counsel for the respective parties that the deposition of MONICA C. SMITH, deponent herein, called by the Plaintiff for direct examination pursuant to the Federal Rules of Civil Procedure, may be taken at this time by the notary; that said deposition may be reduced to writing in stenotype by the notary, whose notes may then be transcribed out of the presence of the witness; and that proof of the official character and qualifications of the notary is expressly waived.

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1 (Witness sworn.)

2 MS. JREISAT: For the record, the parties  
3 have stipulated that the court officer who  
4 administered the oath and who is transcribing  
5 the deposition is, obviously, an Ohio notary  
6 and is present here with Counsel; whereas, the  
7 witness is currently in Chicago, Illinois. The  
8 parties have stipulated that there are no  
9 objections to that. Is that correct,  
10 Mr. Allison?

11 MR. ALLISON: Yep.

12 MONICA C. SMITH,  
13 having been duly sworn, was examined and testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. JREISAT:

17 Q. Ms. Smith, I introduced myself earlier. I  
18 am Wijdan Jreisat. Would you state your name for  
19 the record, please.

20 A. Monica C. Smith.

21 Q. And would you provide us with an address  
22 for you?

23 THE WITNESS: Yes. Could you share with  
24 me who all is involved with the call?

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1 MS. JREISAT: Oh, I apologize. This is  
2 Wijdan Jreisat speaking. We have the court  
3 reporter here; Mr. Jon Allison, who is the  
4 attorney for EyeMart Express --

5 THE WITNESS: Okay.

6 MS. JREISAT: -- and we have Jonathan  
7 Herskovitz on the line by phone.

8 THE WITNESS: All right.

9 MS. JREISAT: Okay?

10 THE WITNESS: All right.

11 BY MS. JREISAT:

12 Q. Could you provide us with an address for  
13 you?

14 A. Sure. Sure. The work address is  
15 Wilmorite Properties, 200 South Wacker -- and that  
16 is on the 31st floor -- in Chicago, Illinois 60606.

17 Q. And is Wilmorite Properties your current  
18 employer?

19 A. Yes.

20 Q. Who did you work with prior to Wilmorite  
21 Properties?

22 A. L&H Real Estate Group.

23 Q. And how long did you work for L&H?

24 A. Two years. I worked for them at two

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1 points, but the last time I worked for them for two  
2 years.

3 Q. Okay. And prior to L&H who did you work  
4 for?

5 A. General Growth Properties.

6 Q. What is your current employment?

7 A. What do you mean?

8 Q. What do you do?

9 A. Oh, I am a leasing representative for  
10 Wilmorite Properties, and we are an account-based  
11 company. So I have several accounts that I work on.  
12 We have about 17 shops and centers that we own.

13 Q. And when you worked for L&H Properties and  
14 General Growth, were you also a leasing  
15 representative for them?

16 A. Yes. Yes.

17 Q. How long have you been a leasing  
18 representative?

19 A. Let's see. Since 1997. Seven years.

20 Q. And I would like to direct your attention  
21 to the year 2002. During that year who were you  
22 working for?

23 A. 2002 I had two employers. I worked at  
24 L&H -- no. Wait. Let me get my dates right. 2002?

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1 When did I start here? This is '04. I started here  
2 in April of 2002. And then before then I was with  
3 L&H Real Estate Group.

4 Q. Okay. Do you know M&S Advisory Group?

5 A. Yes.

6 Q. Do you know Mr. Martin Sherman?

7 A. Yes.

8 Q. How long have you known Mr. Sherman?

9 A. I have known him for a couple of years.  
10 Actually, we did -- the first deal I did with him  
11 was at Park Plaza Mall, which is in Little Rock,  
12 Arkansas, and that is when I was at L&H, and at the  
13 time they managed it. And that was the first -- it  
14 was a renewal. So that was the first deal that I  
15 actually did with him.

16 Q. And have you had occasions to deal with  
17 Mr. Sherman since then?

18 A. Yes.

19 Q. Did you have any contact with M&S Advisory  
20 Group or Mr. Sherman regarding any business for  
21 EyeMart Express?

22 A. Yes.

23 Q. When did that take place?

24 A. It took place in '02. Let me look here in

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1 my notes and see when we first spoke about it.

2 Okay. I have in my notes February 25th, '02.

3 Q. And what happened on February 25th, '02?

4 A. He told me about a new concept he was  
5 handling called EyeMart Express. He mentioned that  
6 they were a little bit more fashionable than a  
7 LensCrafters. He said they needed 3,500 square  
8 feet, and they averaged about 1.4 million in sales.  
9 That they would average about 1.4 million in sales.

10 Q. And did you discuss specific properties  
11 that could be potential locations for EyeMart  
12 stores?

13 A. Yeah. I mean, at the time I was working  
14 on three centers. So we spoke about Pecanland Mall  
15 in Monroe, Louisiana; we also spoke about Park Plaza  
16 in Little Rock, Arkansas; and then I had a shared  
17 duty with Glenbrook Square in Ft. Wayne, Indiana.  
18 And that is the deal we were actually able to close.

19 Q. Okay. But you discussed all three malls  
20 with Mr. Sherman?

21 A. Yes. Yes.

22 Q. Okay. Let me direct your attention to the  
23 Glenbrook Square Mall. Did L&H represent that mall  
24 at that time?

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1 A. Yes, we did. They did, yes.

2 Q. And did Mr. Sherman contact you about  
3 leasing space at that mall for EyeMart Express?

4 A. I don't recall who contacted who, but we  
5 had a conversation about it. And Marty and I sort  
6 of kept in contact. Every now and then I would call  
7 him and say, "Hey, what is going on? Any folks" --  
8 you know, "any people you are representing?" And he  
9 mentioned that, you know, he was representing a new  
10 concept.

11 So that is -- you know, I don't remember  
12 who actually initiated the phone call, but the  
13 outcome was he mentioned that he had a new entity  
14 that he was representing.

15 Q. Did L&H end up negotiating for space at  
16 the Glenbrook Square Mall with EyeMart?

17 A. Yes.

18 Q. Did you do that -- were you involved in  
19 those negotiations?

20 A. Yes. I did it. I did the deal.

21 Q. Okay. And when you say you did the deal,  
22 what did you do?

23 A. Well, I pretty much, you know, got him the  
24 information he needed on the center. But he was,

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1 you know, somewhat familiar with the center as well  
2 because he has been in the industry for quite some  
3 time. So we discussed numbers on Glenbrook, got him  
4 a proposal, you know, negotiated, got it approved,  
5 and got leases out.

6 Q. Okay. Do you recall how long that process  
7 took?

8 A. It went really quick because Marty is one  
9 of the few people in the business that can, you  
10 know, sort of get to the bottom line pretty quickly  
11 and know if you are going to have a deal or not. So  
12 it wasn't something that drug on for a long time.

13 Let's see. I think we probably finalized  
14 everything in about a week or two.

15 Q. Were you aware of EyeMart prior to your  
16 contact with Mr. Sherman about it?

17 A. No. I hadn't heard of them.

18 Q. Okay. Subsequent to the negotiation of  
19 the Glenbrook Square Mall lease, did you have any  
20 other discussions with Mr. Sherman regarding any  
21 other spaces for EyeMart?

22 A. Yeah. We talked about Park, and I -- I am  
23 referring back to my notes here and my database. I  
24 quoted him a rent number for Park Plaza. And then

1 Pecanland, he said that there would be a problem.  
2 There would be an issue getting doctors there. But  
3 I did quote him rent and TA as well for Pecanland.

4 Q. Are you familiar with the International  
5 Council of Shopping Centers?

6 A. Yes.

7 Q. And are you a member of that organization?

8 A. Yes.

9 Q. Can you explain to me what that  
10 organization is?

11 A. It is -- International Council of Shopping  
12 Centers is basically what the name says. It is an  
13 international organization that is sort of the --  
14 sort of the father of the industry. And they are  
15 responsible for sort of putting together all of the  
16 conventions that we go to to meet and make deals  
17 with retailers and vice versa.

18 And they also publish several different  
19 types of publications. They publish a monthly  
20 Shopping Center Today that sort of keeps everybody  
21 abreast of what is going on in the industry. And  
22 they also offer classes, and they also offer, you  
23 know, different sorts of certifications and sorts of  
24 research. And, you know, it is the main

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1 organization for our industry pretty much.

2 Q. Okay. Did you attend the ICSC convention  
3 in Las Vegas in May of 2002?

4 A. Yes.

5 Q. Did you have any appointments scheduled  
6 with Mr. Sherman at that convention?

7 A. Yes, I did.

8 Q. Was that appointment scheduled before the  
9 convention?

10 A. Yes.

11 Q. And what was the purpose of that  
12 appointment?

13 A. Well, at that time in 2002, I had just  
14 started with Wilmorite, so I was -- I was an account  
15 base. I was responsible for two centers:  
16 Charlestown Mall in St. Charles, Illinois, and West  
17 Shore Mall in Holland, Michigan. And I called him  
18 up to talk to meet with him to talk about Crabtree &  
19 Evelyn and also EyeMart.

20 Q. Okay. Were you specifically to discuss  
21 EyeMart business at that appointment?

22 A. Yes. Yes, that is what I have in my  
23 notes.

24 Q. Did Mr. Sherman keep that appointment with

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1 you?

2 A. Yes, he did.

3 Q. Did anyone from EyeMart attend that  
4 meeting with him?

5 A. No.

6 Q. Do you recall what you discussed at that  
7 meeting?

8 A. We discussed Crabtree in Charlestown, and  
9 he said he probably was -- oh, I can't tell the  
10 details of the meeting. But we discussed Crabtree  
11 in Charlestown. And then he passed on West Shore  
12 and Charlestown for EyeMart.

13 Q. Okay. Do you recall any other discussions  
14 regarding EyeMart at that meeting?

15 A. No. That was pretty much it. They  
16 weren't the type of centers that they were looking  
17 for, and so they passed. He passed on it.

18 Q. Okay.

19 A. I wasn't surprised considering, you know,  
20 that they went into Glenbrook Square, which is an A  
21 center, and the centers that I was pitching were C  
22 centers. So I wasn't surprised.

23 Q. Are you familiar with Mr. Sherman's  
24 reputation in the retail leasing business?

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1 A. Yes.

2 Q. How are you familiar with that reputation?

3 A. Just being in the business for several  
4 years. People talk.

5 Q. What is his reputation?

6 A. Well, the people that are close to me,  
7 they think very highly of him.

8 Q. How do you mean?

9 A. Well, he gets the deals done, and he is a  
10 nice guy, but he is also very straight and to the  
11 point. You know, people respect that.

12 Q. Was it important to you that he was  
13 involved in negotiations on behalf of EyeMart?

14 A. Oh, yeah. I mean, once -- you know, once  
15 he said to me, you know, he was representing this  
16 new tenant -- I knew if he was representing them,  
17 they had to have a pretty significant amount of  
18 credibility. So even in selling the deal, I pretty  
19 much told the folks there, "Look, Marty Sherman is  
20 representing them. His name goes a long way. I am  
21 considering the kind of clients he has."

22 Q. What do you mean, "selling the deal"?

23 A. Well, I have to sell deals to my  
24 committee. Once I negotiate the deal with the

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1 tenant or the broker, or the tenant rep, in this  
2 case, I still have to go to my committee. Which at  
3 the time at Landau was the president or CFO, blah,  
4 blah, blah. And, you know, that deal still has to  
5 be sold, because, you know, it is their real estate.  
6 And then they have to sell it to the owners of the  
7 mall.

8 Q. So do you have instances where you might  
9 negotiate a deal with somebody, and then when you go  
10 to the committee to try to sell them on the deal,  
11 they decide to pass?

12 A. Sure. It happens. Not often with me, but  
13 it does happen.

14 Q. Okay. And why is it that you were able to  
15 use Mr. Sherman's involvement with EyeMart to sell  
16 the deal to L&H?

17 A. Well, I had to use it because they were a  
18 concept that no one had heard of. We were putting  
19 them in our premiere center. At the time at Landau,  
20 Glenbrook Square, you know, had been pretty much  
21 their baby and their signature property forever.  
22 And to pretty much go to them and say, "Hey, guess  
23 what? I have this new concept. Sorry I can't  
24 really show you any pictures, but it is going to be

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1 really good. Trust me on this." You know, I had to  
2 obviously say, "And also, Marty Sherman is  
3 representing it."

4 Q. So would it be fair to say that  
5 Mr. Sherman's involvement with EyeMart was  
6 essentially a stamp of approval of that company as a  
7 tenant at your mall?

8 A. It got it done a lot quicker. I mean, if  
9 he weren't involved or if it wasn't someone of his  
10 caliber involved, I would have had to do a lot more  
11 footwork and a lot more selling. And they would  
12 have wanted to see, you know, I think, a lot more  
13 backup to prove the deal with a center such as  
14 Glenbrook.

15 Q. Like what?

16 A. Well, I would have, obviously, had to go  
17 meet with the tenant. I would have had to have seen  
18 some of the locations. I would have called and  
19 gotten some references. We would have done a really  
20 pretty significant background check as far as  
21 credit. And I would have just had to have gotten  
22 really warm and fuzzy with them.

23 Q. So is it possible that if EyeMart had  
24 approached you without Mr. Sherman, you may not have

1 been willing to discuss entering into a lease  
2 agreement for Glenbrook Square with them?

3 A. I would have still discussed it. It just  
4 would have taken a lot more time. And I don't know  
5 if the excitement level would have been there like  
6 it was. Because I knew with him calling me, I knew  
7 it was a real deal.

8 And, you know, I get calls all of the time  
9 from folks who want to go into the mall. And you go  
10 through, you know, the whole dog and pony show,  
11 presenting it to your folks, and the deal doesn't  
12 happen. Especially if it is folks who haven't been  
13 in a mall before. Because there is a huge learning  
14 curve. There is a big difference, you know, going  
15 into a shopping center if you haven't done it  
16 before.

17 Q. How do you mean?

18 A. It is a totally different environment.  
19 You know, I don't even honestly remember, it has  
20 been so long, if they had -- I am trying to think  
21 what kind of store. I think they had freestanding  
22 stores or -- I don't even know. I honestly don't  
23 remember because it has been a couple of years. I  
24 am trying to remember what exactly. He told me what

1 they were before they entered into malls. But I  
2 know they didn't have any mall deals at the time.  
3 But it is a totally different animal.

4 If someone is in a freestanding or if they  
5 are in a strip center, they have to be accustomed to  
6 being into a 1-million, 2-million-square-foot  
7 project. You have to market differently. You have  
8 got to really understand who your competition is in  
9 the mall. You know, it is me being on the phone for  
10 hours trying to tell you the differences and the  
11 things that are important going to the mall.

12 Q. In general, how often have you dealt with  
13 Mr. Sherman in negotiating leases?

14 A. We did one deal. We did the renewal for  
15 Park Plaza Crabtree & Evelyn. And that was the only  
16 deal that actually got -- that we actually did.

17 Q. You mentioned that when he called, you  
18 knew it was a real deal. What do you mean about  
19 that?

20 A. Because I knew -- with his reputation, I  
21 mean, I knew he wouldn't be wasting his time or my  
22 time with something that wasn't real. The reason it  
23 happened so quickly is because I gave it my full  
24 attention because I knew it was a deal I could get

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1 done quickly because he knew what he was doing.

2 Q. Did it also affect what kind of terms you  
3 offered?

4 A. Yeah. I mean, I knew I wouldn't be able  
5 to pull the wool over his eyes. So, you know, there  
6 are certain things I know that I probably would not  
7 be able to get. As opposed to things that I would  
8 be able to get from someone who has never been in a  
9 mall before.

10 Unfortunately, there are many folks in the  
11 business that when they see someone who hasn't been  
12 in malls before, they see a local person coming, you  
13 know, it is -- they take them for everything they  
14 have. And I have seen it happen a lot, and it is  
15 really unfortunate. I have seen a lot of people  
16 file bankruptcy, not make it, because they get into  
17 these malls; they get into the wrong locations; they  
18 get deals that are too aggressive; they are not  
19 looking at the total occupancy; they are not looking  
20 at the fact that it is going to take them time to  
21 get up and running; many of them forget that they  
22 have to market. You know, it is tons and tons and  
23 tons and tons of different problems.

24 And unfortunately, as I said, a lot of

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1 developers know that. And many of them get it stuck  
2 to them, and they usually end up paying really  
3 outrageous rent, and they don't ask for things that  
4 they should.

5 Q. And in your dealings with Mr. Sherman on  
6 behalf of EyeMart, did you see any of those  
7 problems?

8 A. No. I think the deal that we put together  
9 was very fair considering that it is an A-plus  
10 center. And I think we both knew that. So there  
11 was no reason to haggle and nickel or dime. If I  
12 recall, there wasn't any TA in the deal. Which for  
13 a center such as Glenbrook, that is not unheard of.  
14 And there really didn't necessarily have to be.

15 So we were able to get the deal done  
16 quickly because he understood it was a really good  
17 center and it was a good opportunity for them. And  
18 so it went very quickly and very smoothly. And when  
19 you have someone that is seasoned and that is really  
20 good at what they do, the deals will go quick.  
21 Because they know what the perimeters are and they  
22 know what malls they need to be in, and they know  
23 who they need to talk to. Not only what malls, but  
24 they know where they need to go in the mall.

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1 Q. Would you consider Mr. Sherman such a  
2 person?

3 A. Yeah. Yeah.

4 Q. Is there anything else that you recall or  
5 that is significant about your dealings with  
6 Mr. Sherman on behalf of EyeMart?

7 MR. ALLISON: I would object to the form  
8 of the question.

9 A. I'm sorry. Should I answer that or no?

10 Q. You can answer it. Or strike that. I  
11 will rephrase.

12 Do you recall anything else about your  
13 dealings with Mr. Sherman on behalf of EyeMart?

14 MR. ALLISON: I still object to the form.

15 Q. You can answer.

16 A. I just heard someone say they object. So  
17 should I answer or no?

18 Q. Yeah, you are allowed to answer. This is  
19 a deposition. So he has to do that for the record,  
20 but you are allowed to answer.

21 A. Oh, okay. I guess I would just reconfirm  
22 what I said before. It went very quickly and  
23 smoothly because, you know, who he is. And, you  
24 know, I -- just as he is, I think that is why he

1 enjoys working with me because I am the same way.  
2 And he was, you know, very professional and great  
3 with follow-up, and, you know, we got it done.

4 Q. Would you say that the leasing business --  
5 in the leasing business, are relationships  
6 important?

7 A. Extremely.

8 Q. And why is that?

9 A. Because there are hundreds of malls in  
10 this country. And there are really good malls in  
11 the country. There are a lot of really good ones.  
12 And especially in the type of economy that we have  
13 today, I mean, you just don't -- you know, the open  
14 to buys are getting smaller and smaller and smaller  
15 and smaller. And --

16 Q. I'm sorry. I missed -- you said -- is it  
17 the open --

18 A. Open to buys. Meaning, for example,  
19 EyeMart, let's say, two years ago they were willing  
20 to do 40 stores, but because of, you know, the  
21 economy, they have decided to slash it to 20 stores.  
22 So what you are finding is you are seeing a lot of  
23 uses and a lot of people not only filing bankruptcy,  
24 but you are seeing people who are doing deals.

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1 Quite a few of them are either not opening the  
2 stores, they are pulling back altogether, or they  
3 are making them smaller, or they have decided that  
4 they are going to do a smaller, a lesser, amount.  
5 And that has been happening for the last couple of  
6 years.

7           So the relationships are important  
8 because -- for example, with myself, you know, if I  
9 am getting calls all day, all day, all day, and if  
10 it is someone I have a relationship with, I know  
11 that they are good at what they do, I know they can  
12 get the deal done, I know they know how to close  
13 it -- a lot of people don't know how to close the  
14 deals in this business, believe it or not -- that is  
15 going to be the first person I call back. And, you  
16 know, especially if I enjoy speaking with them and  
17 they are a pleasant person. Because you want to  
18 enjoy what you do.

19           So the relationships are very, very,  
20 important. Opposed to, you know, a couple of other  
21 people calling you and you really don't know who  
22 they are. I mean, I will call them back, but they  
23 may not get the call back, you know, right that  
24 second. They may get it back the next day or the

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1 next couple of days.

2 Q. And is there -- the trial in this matter  
3 is scheduled for September 2004. Do you have any  
4 plans to be in Cincinnati at that time?

5 A. No. I think I am going to pass. I will  
6 actually be at the Olympics.

7 Q. Oh, that sounds like a lot more fun, I  
8 would say.

9 A. Yeah. Yeah.

10 MS. JREISAT: I believe that is all I have  
11 for you right now.

12 THE WITNESS: All right.

13 MR. ALLISON: I would like to confer with  
14 my client momentarily. And then I will come  
15 back, and I may have a few.

16 MS. JREISAT: Okay.

17 (Recess taken: 6:04 p.m. to 6:09 p.m.)

18 MR. ALLISON: We can go back on the  
19 record.

20 MS. JREISAT: Yeah. Jon, actually, if you  
21 don't mind. I have a real quick question, if  
22 you don't care.

23 MR. ALLISON: Okay. Go ahead.  
24

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1 BY MS. JREISAT:

2 Q. Ms. Smith, in your experience as a leasing  
3 representative, have you dealt with any other  
4 leasing consultants other than Mr. Sherman?

5 A. Yes.

6 Q. And when you generally negotiate with  
7 those consultants, what is -- what portion of the  
8 deal are they responsible for?

9 A. They are responsible for initiating the  
10 deal, helping to -- "initiating" meaning as far as  
11 sort of choosing those locations that they feel  
12 would be the best locations and spaces in centers  
13 for their client. And then we negotiate the  
14 economics of the deal and the term and the proposal.  
15 And at that point, typically, the retailer will  
16 negotiate the lease.

17 And then the tenant rep will get involved,  
18 you know, if we hit a snag or something like that.  
19 But usually they are glad to be out of it. They get  
20 to do the fun part and negotiate the space and the  
21 proposal. And most clients -- you know, they  
22 prefer -- they have their own in-house legal  
23 department, or they have their own legal folks that  
24 they contract out, and they -- you know, they prefer

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1 to use their own people to negotiate the lease.

2 Q. So the leasing consultant essentially  
3 discusses and negotiates with you the basic terms of  
4 the lease and then --

5 A. Yeah, we will finalize the proposal with  
6 the tenant rep. And then once that -- once it is  
7 approved on the landlord's side, at that point it  
8 is -- you know, the baby becomes the retailer's.

9 Q. Okay. So then at that point the  
10 negotiation of the lease itself turns to the  
11 retailer, in your experience?

12 A. Typically.

13 Q. Okay. And is that the way it went in the  
14 negotiations on behalf of EyeMart?

15 A. Yeah, that is how it went. But I have to  
16 tell you, I was not there for the opening of the  
17 store because I left.

18 Q. Oh, that is right. I think you mentioned  
19 you left in April?

20 A. Yeah.

21 Q. Okay.

22 A. Yeah.

23 MS. JREISAT: Okay. Thank you. That is  
24 all I have for now.

CROSS-EXAMINATION

BY MR. ALLISON:

Q. I just have a few, Monica. This is Jon Allison, as I think Wijdan mentioned, the attorney representing EyeMart.

A. Okay.

Q. I just wanted to go back to -- you had testified that there was a meeting that you had at the Las Vegas ICSC; is that correct?

A. Yes.

Q. What year was that in?

A. It was in 2002.

Q. Okay.

A. I had just started here.

Q. And who was that meeting with?

A. It was with Marty Sherman, and he brought two people along that were from Crabtree.

Q. Okay. And how did that meeting get set up; do you know?

A. I believe I initiated the meeting.

Q. Okay.

A. I could not even tell you for sure. I would hate to even say for sure that I am the one that called him, but that is my guess.

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1 Q. Do you know when the meeting was set up?

2 A. It was the first day of the convention.

3 So it was on Monday.

4 Q. So you set up the meeting the first day of  
5 the convention?

6 A. No. I set it up prior to the convention,  
7 but the actual meeting date and time was the first  
8 day of the convention, which was on May the 20th.

9 Q. And --

10 A. At 3:30 p.m.

11 Q. And you set -- who did you set it up for?  
12 I apologize.

13 A. It was for Crabtree and also -- I have it  
14 here. It is in my notes. Crabtree and Dr. Barnes'  
15 Eye Wear.

16 Q. Okay. Did you have in mind what you  
17 wanted to discuss at that meeting?

18 A. Yeah. At that time I was an account base.  
19 I had only two properties that I leased, Charlestown  
20 and West Shore. So that was the plan was to talk  
21 about both concepts at both centers.

22 Q. Okay. And was it your suggestion that it  
23 be set up for EyeMart and Crabtree?

24 A. Oh, I am sure because I had just did a

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1 deal with them. So yeah.

2 Q. Okay. And then you had testified earlier  
3 that Marty said that the locations that you brought  
4 up in that meeting would not be good for EyeMart?

5 A. Yeah, he just -- you know, it was very  
6 brief. He just -- he passed on them.

7 Q. Okay.

8 A. It wasn't -- you know --

9 Q. So was the majority of the meeting spent  
10 discussing Crabtree & Evelyn?

11 A. The majority of the meeting was spent  
12 discussing West Shore, a redevelopment that we were  
13 projecting to do, and me trying to get Crabtree to  
14 go in that redevelopment. But it wasn't -- yeah, I  
15 would have to say the majority of that probably was  
16 it.

17 Q. Okay. Do you know when you set up the  
18 meeting?

19 A. I had -- our assistant in the corporate  
20 office, she was setting up meetings for me even  
21 before I had started. So -- and I started  
22 April 9th, and they were setting up meetings. I  
23 gave them a list of people to contact. And I  
24 have -- let's see if I have that right here.

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1 Because she may have called him before I started.

2 Because they set up about 10 meetings before I  
3 started. Let's see.

4 Q. I mean, it sounds like you are looking off  
5 of notes to answer some of these questions.

6 A. Yeah.

7 Q. I am going to request a copy of those  
8 notes. Can you make a copy of those and send those  
9 to me?

10 A. Yeah. I will just have to get it okayed  
11 by our in-house guy -- in-house attorney.

12 Q. I would suspect -- okay.

13 A. All right. Let's see.

14 Q. I would like to have a copy of all of the  
15 notes that you used during this deposition.

16 A. Okay. I will just have to -- Tom Daniels  
17 is sort of our in-house legal person. He will just  
18 have to review everything first, and then I could  
19 get them shipped out to you.

20 Q. That is fine.

21 A. Here it is. Dr. Barnes' Eye Wear Express,  
22 Midwest real estate person, (513) 563-3566. This is  
23 her handwriting. So yeah, she did call -- she did  
24 call him before I actually started, which was prior

1 to April 9th. Because I knew if I waited until I  
2 started, there would -- you know, most people -- or  
3 a lot of people start doing their Vegas meetings in  
4 March. I have already, actually, started mine. And  
5 waiting until April 9th, there would have been a lot  
6 of people I could not meet with. So I gave her a  
7 list. It is like a three-page list here -- three  
8 and a half pages -- of retailers to call for me, and  
9 he was one of them.

10 Q. Okay. So would you say that, really, the  
11 meeting was set up to meet with Martin Sherman and  
12 whoever he had to talk about at the time?

13 A. It was specifically Marty Sherman,  
14 Crabtree, and Dr. Barnes. That is what I have in my  
15 notes. And that is what I have at the top of my  
16 notes is the retailers to chat about.

17 With him being a tenant rep, oh, sure,  
18 there is always a chance that people are getting new  
19 retailers. But I didn't know that he had any. But  
20 if he did, it is always great to talk about them.  
21 But the main point was to talk about Crabtree and  
22 EyeMart.

23 Q. Was it unusual that no EyeMart  
24 representatives were at the meeting?

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1 A. No. No, that wasn't.

2 MR. ALLISON: I think that is all I have.

3 MS. JREISAT: Thank you very much for your  
4 time, Monica.

5

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7

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MONICA C. SMITH

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10 (Deposition concluded at 6:18 p.m.)

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C E R T I F I C A T E

STATE OF OHIO :  
:SS  
COUNTY OF HAMILTON :

I, Lisa L. Weisenberger, a duly qualified and  
commissioned notary public in and for the State of  
Ohio, do hereby certify that prior to the giving of  
her deposition, the within named MONICA C. SMITH was  
by me first duly sworn to testify the truth, the  
whole truth and nothing but the truth; that the  
foregoing pages constitute a true and correct  
transcript of testimony given at said time and place  
by said deponent; that said deposition was taken by  
me in stenotypy and transcribed under my  
supervision; that I am neither a relative of nor  
attorney for any of the parties to this litigation,  
nor relative of nor employee of any of their  
counsel, and have no interest whatsoever in the  
result of this litigation. I further certify that I  
am not, nor is the court reporting firm with which I  
am affiliated, under a contract as defined in Civil  
Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and  
official seal of office, at Cincinnati, Ohio, this  
2nd day of March, 2004.

MY COMMISSION EXPIRES:  
August 30, 2008

  
LISA L. WEISENBERGER, RPR  
NOTARY PUBLIC, STATE OF OHIO

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AFFIDAVIT

STATE OF OHIO :  
COUNTY OF HAMILTON : SS

I, ~~Lisa L. Weisenberger~~, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of MONICA C. SMITH, deponent herein, having been submitted to said deponent for review and signature, has not been signed within the twenty-eight (28) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

Lisa L. Weisenberger  
Lisa L. Weisenberger, Court Reporter

Sworn to before me this 8<sup>th</sup> day of April, 2004.

Thomas M. Blasing

Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2009.